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OFFICE OF PETITIONS

In re Patent No. 7,247,612
Tamatani et al.
Issue Date: 07/24/2007
Application No. 10/723602
Filed: 11/25/2003
Attorney Docket No. 14539-004011

: ON PETITION
: UNDER 37 CFR 1.183
: and
: ON APPLICATION FOR
: PATENT TERM ADJUSTMENT
:

This is a decision on the “Response to Decision on Petition Under 37 C.F.R. § 1.183 and on Application for Patent Term Adjustment Under 37 C.F.R. § 1.705(d),” filed September 21, 2009, requesting suspension of the time limit for consideration of an application for patent term adjustment (“PTA”). The response is properly treated as a request for reconsideration of petition under 37 CFR 1.183.

This petition is hereby **DENIED**. This decision is a final agency action within the meaning of 5 U.S.C. § 704 for purposes of seeking judicial review. *See*, MPEP 1002.02.

Your petition for recalculation/reconsideration of the USPTO's PTA determination for U.S. Patent No. 7,247,612 is dismissed as untimely. On February 1, 2010, the USPTO published a Federal Register notice that, *inter alia*, announced a limited waiver of the two-month deadline for filing a petition for reconsideration of a PTA determination under 37 CFR sec. 1.705(d). *See Interim Procedure for Patentees to Request a Recalculation of the Patent Term Adjustment to Comply with the Federal Circuit Decision in Wyeth v. Kappos Regarding Overlapping Delay Provisions of 35 U.S.C. sec. 154(b)(2)(A)*, 75 Fed. Reg. 5043 (Feb. 1, 2010) (notice).

Specifically, patent owners were permitted to request recalculation of a patent's PTA in view of the Federal Circuit decision *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010) up to 180 days after the grant of the patent. The USPTO determined not to accept any requests for PTA recalculation initially filed more than 180 days after patent grant, however, in view of the statutory judicial-review provisions of 35 U.S.C. sec. 154(b)(4), which require that any civil action to challenge the USPTO's PTA determination be brought within 180 days of patent grant. The USPTO believes that the statutory 180-day period for seeking court review of the USPTO's PTA determinations, particularly in view of the six-year statute of limitations that otherwise is

applicable for actions under the Administrative Procedure Act, indicates a congressional intent that PTA issues be resolved shortly after a patent issues. The USPTO does not consider it likely that Congress created a scheme under which the time period to seek initial USPTO review of a PTA determination extends beyond the time period provided for a dissatisfied patentee to seek judicial review of the USPTO's PTA determination. Thus, the USPTO believes that the 180-day period in 35 U.S.C. sec. 154(b)(4) represents the outer limit on the USPTO's ability to conclude its PTA determination.

The present renewed petition under 37 CFR 1.183 is granted to the extent that the decision of July 16, 2009 has been reconsidered; however, the renewed petition requesting suspension of the time limit for consideration of an application for patent term adjustment under 37 CFR 1.183 is **DENIED**.

This patent file is being referred to the Files Repository.

Telephone inquiries specific to this matter should be directed to Derek Woods, Attorney, Office of Petitions, at (571) 272-3232.



Anthony Knight
Director
Office of Petitions